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CHARLES ELMORE CROPLEY

No. 686

In the Supreme Court of the United States

OCTOBER TERM, 1935

FRED O. MORGAN, DOING BUSINESS AS FRED O. MORGAN SHEEP COMMISSION COMPANY, ET AL., APPELLANTS

v.

THE UNITED STATES OF AMERICA AND THE SECRETARY OF AGRICULTURE

MOTION OF THE UNITED STATES OF AMERICA AND THE SECRETARY OF AGRICULTURE FOR IMMEDIATE ISSUANCE OF MANDATE

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Now come the United States of America and the Secretary of Agriculture by the Solicitor General and respectfully move the Court to cause the immediate issuance of the mandate to be directed to the court below pursuant to the decree of this Court entered May 25, 1936, and in support of said motion assign the following:

By joint and final decree entered on June 20, 1935, a statutory three-judge court for the Western District of Missouri dismissed petitions in fifty suits which the fifty appellants herein each

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separately instituted to enjoin the enforcement of an order of the Secretary of Agriculture dated June 14, 1933, fixing maximum rates chargeable by market agencies for selling and buying livestock at the Kansas City Stock Yards in Kansas City, Missouri, and Kansas City, Kansas (R. 166). Prior to the joinder of issue the District Court struck from the several petitions portions alleging that appellants were not granted a proper hearing by the Secretary of Agriculture (R. 137).

The District Court entered a temporary restraining order against the enforcement of the rates prescribed by the Secretary conditioned upon appellants depositing with the court the amounts collected in excess of the prescribed rates (R. 131–136). By the order granting the application for *supersedeas* entered by the District Court on June 29, 1935, the temporary restraining order and the impounding order were continued in effect pending such final disposition of the case as might be required by the decision of this Court (R. 178–180).

On May 25, 1936, this Court rendered its opinion, holding that the court below erred in striking out the allegations of paragraph IV of the bill of complaint with respect to the sufficiency of the hearing accorded appellants by the Secretary of Agriculture, that the defendants should be required to answer these allegations, and that the question of whether appellants had a proper hearing should be determined. The decree of the

District Court was reversed and the cause remanded for further proceedings in conformity with the opinion of this Court.

Under Rule 34 of this Court the mandate will not issue until the expiration of twenty-five days from the date of its decree entered herein on May 25, 1936, unless the time is shortened by order of the Court.

Further proceedings below must be conducted before a three-judge District Court in accordance with the provisions of Section 316 of the Packers and Stockyards Act, 1921, c. 64, 42 Stat. 159, 168; The Act of June 18, 1910, c. 309, 36 Stat. 539; and the Urgent Deficiencies Act of October 22, 1913, c. 32, 38 Stat. 208, 219.

It is believed that it will be difficult to convene a three-judge District Court in the Western District of Missouri in the month of July or August. If the mandate of this Court issues as of course, it will be impossible to have further proceedings in the court below before July. Consequently, unless the mandate is issued immediately, it is probable that such further proceedings cannot be had until autumn.

This rate proceeding was instituted by the Secretary of Agriculture on April 7, 1930. In view of the length of time the proceeding has been pending, appellees submit that it is in the public interest that all reasonable steps be taken to avoid unnecessary delay. Immediate issuance of the mandate

will avoid substantial delay and materially shorten the length of time required for the final disposition of the case.

WHEREFORE, the United States of America and the Secretary of Agriculture respectfully move the Court for immediate issuance of the mandate.

STANLEY REED,
Solicitor General.

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